

THE INDETERMINATE SENTENCE AND PAROLE IN ONTARIO.¹

It has been said that crime is a cancerous growth upon the body politic. Like cancer in the human body, no cure or specific has yet been discovered to prevent or eliminate the disease. As the physicians have been endeavouring to cope with the disease in the human body, so legislatures, courts and criminologists are probing the subject of crime, to discover some means of treating it as will lead to its extermination.

We may be reluctant to admit it, but the startling fact remains that if we are not actually manufacturing criminals, we are at least allowing them, under our very care, to develop continuously. The future criminal if we cannot solve the crime problem, is even now an innocent babe upon his mother's breast, or a wee toddler about the house or a little lad at school.

Up to one hundred years ago, crime was punished with almost brutal severity, even in so-called civilised countries. Death penalties, for crimes which now seem trivial, were all too common. Solitary confinement, long sentences, underground dungeons, exile, transportation and other punishments were the rule, where they are now, (we are thankful to say), an exception.

In the last century great philanthropists, such as Howard, and distinguished writers, such as Charles Reade, Charles Dickens and others, turned public attention to the fact that these cruelties brutalised the criminal without lessening crime and therefore were not in the public interest.

Since that time, the tide has turned and various efforts have been and are being made, to mitigate the cruelties of punishment of criminals in such a way as to lead, if possible, to a reduction of crime and to improving the character and condition of the criminal and his most unfortunate family. Among the steps taken and plans adopted in different places have been the following:

1. Executive clemency; that is either pardoning or allowing a prisoner a restricted freedom during the remaining portion of his sentence.

2. Probation; that is, after conviction and before sentence, allowing the prisoner out of custody under supervision, to maintain

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himself and his family, and by good conduct to rehabilitate himself in public estimation, and become, if he so desires, a useful and exemplary citizen and live down the stain on his character.

3. Extra-Mural Permit, that is allowing a prisoner on a definite sentence, under very strict regulations to remain outside of prison walls to earn a living for himself and family during the balance of his definite term.

4. Parole; that is allowing a prisoner on an indeterminate sentence to leave the prison, rejoin his family and carry on his ordinary business during the balance of his indeterminate term under certain specified restrictions.

The last three of these, probation, extra-mural permit and parole, are termed reformatory measures. The principle underlying them is that many persons who have committed crime are not real criminals, or even if real criminals, desire to have an opportunity of restoring confidence in themselves and living up to the standard required of good and useful citizens and maintaining their families and should be permitted to do so.

Perhaps I should more amply define "Extra-Mural permit." Nearly 80 years ago the great novelist Charles Reade in his wonderful book "It's Never Too Late To Mend" wrote—Would it not be possible for many of these prisoners to sleep in prison and work outside of the prison walls during the day to earn a living for their families?

This is exactly what extra-mural permit means. A prisoner on a definite sentence may be allowed to go out and work daily, returning to the prison at night, his wages going to support his family. This has been in satisfactory operation in Ontario for over six years. Even where it is not practicable to make him sleep in gaol at night very strict regulations govern him and he is essentially still a prisoner.

Besides the above, there have been modifications in treatment of prisoners, by keeping them on prison farms, or, in cities and towns under decent conditions, and supplying them with proper food and clothing so as to prevent the demoralization which resulted from former methods of treatment, and endeavour to discharge a man from prison better physically, mentally and morally than when he came in. Some think this has been carried too far, and that prison life has become too much like hotel life. However, there is no thought of going back to the old system of dungeons and loathsome, foul prisons which existed previously.

My subject in this convention being "The Indeterminate Sentence and Parole in Ontario," let me premise it by the statement that as each Province in Canada largely works out its own solution in this matter, I speak only of Ontario, the Province in which we are now meeting. I may add for your information, that we have here in Ontario, four classes of prisons:

1. The common gaol.
2. Gaol farms.
3. Reformatories.
4. A penitentiary.

The indeterminate sentence by statute applies only to reformatories, but parole includes both reformatories and gaol (or as they are termed industrial) farms, because some prisoners with indeterminate sentences are detained there. These are as follows:

1. Ontario Reformatory at Guelph.
2. Mimico Clay Plant, a branch of the Guelph Reformatory.
3. Reformatory at Burwash (styled The Industrial Farm, Burwash).
4. The Andrew Mercer Reformatory, for females only.
5. Reformatory at Fort William, (called the Fort William Industrial Farm).
6. The Industrial Farm at Langstaff.
7. The Industrial Farm at Concord, for females only.

The last two, Langstaff and Concord, are gaol farms of the City of Toronto.

The parole work is carried on by a Board of Parole consisting of nine members, who meet once in two months at each of the above institutions, to interview prisoners and determine as to whether or not any prisoner shall be allowed his liberty on parole under the indeterminate sentence, or on extra-mural permit on his definite sentence.

Under the Board is a regular staff of officers who carry out the details of parole and extra-mural permits according to a specified set of rules and regulations. At the head of this staff is a Chief parole officer, who is also secretary of the Board of Parole, and attends all its meetings with lists of the cases to be considered, and then controls the staff in carrying out the Board's directions, and supervising all persons on parole.

At the present time there are on parole and extra-mural permit in Ontario, about 580 persons, mostly men who, to the extent of between eighty to eighty-five per cent., are complying with the rules

and regulations and re-establishing themselves in their respective communities.

Some idea of the growth of the system is to be observed when we record that in 1916, the Board considered 164 cases. In 1925, 1,347 cases and in 1928 there were 1,680 cases. This does not mean an increase in crime but widening the scope of the operations of the Board.

It has, we believe, justly established for itself a degree of public confidence which is most encouraging.

The Board is entirely non-political. No attempt is ever made to interfere with its work by any member of parliament, legislature or City Council. The Board is appointed under the Statute known as The Parole Act, now Revised Statutes of Ontario, 1927, Chapter 362, and is a perfectly independent, really a semi-judicial body. We may be certain that the Board, if any effort were made to interfere with its independence, would resign and cease to function.

The indeterminate sentence itself is the product of both Dominion and Provincial legislation, because it deals with cases arising out of the Criminal Code, a Dominion Statute, and also with offences arising out of certain Provincial statutes.

Speaking generally of sentences, it may be stated that when sending a prisoner to a reformatory, the Prisons and Reformatories Act of the Dominion and the Reformatory Act of Ontario both provide that there must be a definite sentence of not less than three months, followed by an indeterminate sentence of not more than two years less one day. The reason for that last expression, less one day, is that any sentence two years or over, must be to the penitentiary, in which the Board of Parole has no jurisdiction and to which there cannot be an indeterminate sentence.

There is some different provision as to women, allowing an indeterminate sentence without a prior definite sentence.

We ask the question, What is an indeterminate sentence, and what are its advantages? It may be for any term from one day to two years less one day. It must be preceded by at least a three months definite sentence. It may be preceded by a definite sentence of any period from three months up to two years less one day. It must be an Ontario reformatory. It is authorized by Dominion Statute, Revised Statutes of Canada, Chapter 163, Prisons and Reformatories Act, Section 46, and also by Provincial Statute, Revised Statutes of Ontario, 1927, Chapter 345, Reformatory Act, Section 18, which is as follows:

Every person sentenced directly to the reformatory shall be sentenced to imprisonment therein for a period of not less than three months, and for an indeterminate period thereafter of not more than two years less one day.

The indeterminate sentence is a flexible one. There is a certain amount of give and take about it, which is regarded favourably. The Crown and the prisoner each see the advantages and protection in it. It is, so to speak, a gesture or intimation to the Parole Board, from the judge or magistrate pronouncing the sentence, that if other things are favourable, the prisoner may be let out on parole at any time after the end of the definite sentence. This, however, contemplates parole under supervision.

The indeterminate sentence brings hope to the prisoner and still retains confidence and power in the Crown.

Parole is different to Extra-Mural Permit which is only on a definite sentence, in that it is much more elastic in its provisions in the prisoner's favour, while retaining power to recall him to prison on any breach of the regulations.

Any prisoner we find would very much prefer to be sent to the reformatory for two years less one day definite, and two years less one day indeterminate, than to the penitentiary even for only three years. They do not like the penitentiary so well because it means less hope for the future.

As to the working out of the indeterminate sentence and parole, so far as the prisoner is concerned, while at the outset the prisoners looked upon it with some degree of suspicion, this has entirely passed away, and I, as a member of the Board of Parole, am assured that the day of the visit of the Board of Parole to any reformatory is now regarded as a red letter day by the inmates of the institution, looked forward to with hope and confidence by all well-behaved prisoners.

At a recent meeting of the Board of Parole in the Burwash Reformatory on the 7th of this month, there were 88 prisoners interviewed and the following directions given:

14 ordered permit and parole.

34 ordered parole.

11 deferred.

18 refused.

9 no action.

2 otherwise dealt with.

Fifty per cent. of these cases resulted in Permit and Parole or Parole. This is an unusually large percentage, but the class of

prisoners that day were, as a whole, much better than ordinarily seen by the Board.

In practice the Board sits in a large room, and each prisoner to be considered is brought in separately and given a seat, and made to feel comfortable and at home, and the members converse with him as to his past, present and future, and the plans he has and responsibilities, and size up the whole situation and the man, and after he retires decide upon what action to take in his case.

Fairly strict rules are laid down by the Board for its guidance. As a general rule, young or first offenders are most favourably considered.

Old offenders or those who have been on parole before are not paroled unless under special circumstances or a very strong case for relief is made out.

A prisoner with a venereal disease is not considered at all until he is cleaned up.

A drug addict or drug vendor is detained in prison for at least a year.

A drunkard also for one year at least.

Indecent cases and those of a like nature are seldom, if ever, paroled.

We have a very excellent group of superintendents in our reformatories and industrial farms and the report of the superintendent is always secured before any case is finally decided. In fact, the superintendent sits in the room with the Board when dealing with the cases.

The report of the trial judge or magistrate carries great weight with the Board.

No prisoner is allowed out on parole for whom employment is not immediately available.

The Parole Officer reports fully as to the antecedents, environment and probability of prisoner doing well, and sometimes he advises against parole which is not then granted.

The prisoner after being paroled, and during the remainder of his indeterminate term, is under supervision of the Parole Officer and has to report monthly or whenever required, and is frequently also under the supervision of some local person, such as the Chief of Police or a clergyman or employer.

The drunkard and the drug addict and the long record prisoner present the most serious problems, but these are carefully and patiently considered, in both the public interest and that of the prisoner and his family. The drinker and the drug addict have not

much chance for freedom inside of a year in the absence of very special circumstances.

The results are justifying this great work in the public interest and for the sake of humanity. Over eighty per cent. live up to the regulations which are quite strict. The cost of probably two reformatories is saved to the Province by the comparatively trifling expense of the Parole Board, whose members receive only a small allowance for actual disbursements. The expansion of the work has been so great that each meeting at Guelph now takes two days, and the others about or nearly one day each.

After the Board makes its order, the case passes to the Chief Parole Officer to carry out the details of releasing the prisoner from custody, having all the necessary papers signed and, if the prisoner is out of Toronto, arrange if possible, that he shall be unostentatiously under the watchful care of a chief constable, clergyman or some other responsible person. He is to report to the Parole Officer monthly or whenever directed in a specified form. If he fails at all, one of the officers immediately visits him, and if it is a real failure, returns him to prison; but if he only needs some counsel or assistance, will put him on his feet and give him a fresh start.

We are perhaps fortunate in the opposition we meet. Nothing worth having in this world is gained without opposition. A few very worthy persons who cannot see any other way to deal with prisoners than with severity, when they behold the right hand of fellowship extended to a prisoner, immediately cry out, "Molly coddling, molly coddling." When they hear of one paroled man cut of nine or ten who fails and goes back into crime, they say, "We told you so," forgetting entirely the other eight or nine who are patiently plodding their way back into good citizenship. We admit some failures. It is only human, but we say with assurance, that saving eight or nine out of ten prisoners abundantly justifies our confidence in the parole system.

One of the difficulties we labor under is that failures are often advertised almost to the extent of broadcasting, while we have to keep very quiet about successes because one of the chief ingredients of success in reforming prisoners is to keep them out of the public eye, and the scornful gaze of those who, to use a slang expression, are knockers and not boosters. Let me give two or three actual cases.

First showing need of Parole. Some years ago a man in one of our Canadian cities was sent for a long term for certain speculations of a serious nature extending over a considerable period.

Before the prison doors closed on him he had come to his senses and was thoroughly humbled. Yet he had to serve his full term, a repentant sinner who obtained no forgiveness. His family suffered more than he did. When released at the end of his sentence he went to work and before very long, not only got on his feet but actually paid off all his debts to the last cent. He undoubtedly might have been set free after serving one fourth or at most one half of his sentence.

The next is one of our successes. A young man, aged 19, of foreign parentage, a convicted chicken thief, was given a sentence, four months definite and twenty months indeterminate. He had previously some Industrial School record. During his definite sentence the Board felt him an unsafe risk. He had some fine qualities. His home was not good, but he had a very exemplary sister. After his definite sentence expired, he was paroled. Good employment had been obtained, and everything looked favorable. However he left his work, disappeared and violated all his parole conditions. Through his sister's influence he repented and was given another chance. This proved successful, and he reported regularly and worked himself into a good position, and is now doing well. Thus a public liability was converted into a public asset.

The next is another success. A young man of 26 years was convicted of a serious crime, and sentenced to 18 months definite, and 24 months less one day indeterminate. This was his first offence. He had been spoiled by his mother who worshipped him. He had separated from his wife. He was a very self righteous individual. An extra-mural permit was granted him. Failing to keep the regulations, was returned to prison. In a week he became penitent with a much humbler view of himself. Was then allowed another opportunity to prove his real merit. He has turned out a really good fellow chastened by his past experience, but doubtless with a splendid future ahead of him.

The last I give you is a failure. A young man 32 years of age of excellent parentage, high intelligence, well educated, splendid executive ability, great initiative, an expert salesman, but addicted to liquor. Two convictions in the west for forgery and now in the Reformatory for another crime of dishonesty. The Parole Board gave him special hearings and paroled him. He shortly afterwards, through drink, violated the regulations and disappeared. Was recaptured and returned to the Reformatory with an additional sentence for escape. Later on was again paroled and after a short time at liberty took to the drink, and before long was back again in the

Reformatory. Nothing more could be done with or for him, and he had to serve his full term. We have not heard of him since and sincerely hope he has reformed.

We do not believe in molly coddling or sending boquets or dainties or delicacies to convicted men. We do, however, claim that a man who perhaps inadvertently or otherwise, has fallen into crime and desires to mend his ways, is entitled to an opportunity to climb back again up the ladder of respectability to good citizenship.

We who live in human glass houses should not throw stones. We believe, with the noted writer, that there is enough bad in the best of us, and enough good in the worst of us, to keep the best of us from throwing stones at the worst of us.

With the help of God, we intend to continue as we have begun and we are encouraged to do so by that greatest of all Books which says, "Let him know that he which converteth a sinner from the error of his way shall save a soul from death and shall hide a multitude of sins."
